

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID JOHN CULHANE,

Defendant-Appellee.

UNPUBLISHED

February 3, 2005

No. 251163

Isabella Circuit Court

LC No. 03-002188-AR

Before: Zahra, P.J., and Neff and Cooper, JJ.

ZAHRA, P.J. (*dissenting*).

I respectfully dissent. I conclude that the district court abused its discretion by refusing to bind over defendant for trial on the charge of larceny in a building, MCL 750.360.

The complainant's testimony that defendant told her he took her money so that the complainant would call her merely creates a fact question whether defendant intended to permanently deprive the complainant of her money. This fact question is to be resolved by a jury and does not authorize the district court to refuse to bind defendant over on the charge of larceny in a building. The fact that defendant took the complainant's money without authority to do so and deprived her of it for two weeks, until after the complainant reported the crime to the police, is sufficient evidence to bind defendant over on the charge of larceny in a building.

I would reverse the order of the circuit court and remand the case to the district court for entry of an order binding defendant over on the charge of larceny in a building.

/s/ Brian K. Zahra